

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #9	CCRB Case #: 201601121	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/09/2016 8:00 PM	Location of Incident: § 87(2)(b) § 87(2)(b) 48th Precinct stationhouse	Precinct: 48	18 Mo. SOL 8/9/2017	EO SOL 8/9/2017	
Date/Time CV Reported Wed, 02/10/2016 1:17 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/10/2016 1:17 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Sandra Martinez	4343	955139	PBBX
2. POM Darrell Lowe	31849	955099	PBBX
3. LT Luis Crespo	00000	903709	PBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Yubany Campuzano	00711	917371	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Sandra Martinez	Force: PO Sandra Martinez used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Darrell Lowe	Force: PO Darrell Lowe used physical force against § 87(2)(b)	§ 87(2)(b)
C.POF Sandra Martinez	Abuse: PO Sandra Martinez entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
D.POM Darrell Lowe	Force: PO Darrell Lowe used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Darrell Lowe	Abuse: PO Darrell Lowe entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
F.POM Darrell Lowe	Force: PO Darrell Lowe used pepper spray against § 87(2)(b)	§ 87(2)(b)
G.POM Darrell Lowe	Force: PO Darrell Lowe used physical force against § 87(2)(b)	§ 87(2)(b)
H.POM Darrell Lowe	Abuse: PO Darrell Lowe threatened to arrest § 87(2)(b)	§ 87(2)(b)
I.LT Luis Crespo	Abuse: Lieutenant Luis Crespo authorized the strip-search of § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
J.LT Luis Crespo	Abuse: Lieutenant Luis Crespo authorized the strip-search of § 87(2)(b)	
K.POM Darrell Lowe	Abuse: At the 48th Precinct stationhouse, PO Darrell Lowe strip-searched § 87(2)(b)	
L.POM Darrell Lowe	Abuse: At the 48th Precinct stationhouse, PO Darrell Lowe strip-searched § 87(2)(b)	

Case Summary

On February 10, 2016, § 87(2)(b) called the Civilian Complaint Review Board (CCRB) and filed this complaint. Video footage captures the incident.

On February 9, 2016, at approximately 8:00 p.m. § 87(2)(b) and his friend, § 87(2)(b) were in the fourth floor hallway, outside of § 87(2)(b) in the Bronx, where § 87(2)(b) resides. PO Sandra Martinez and PO Darrell Lowe, both from Patrol Borough Bronx, were conducting a vertical patrol of the building, as there is a Clean Halls sign posted in front of the location (Board Review 01). PO Lowe and PO Martinez arrived on the fourth floor via elevator, where they encountered § 87(2)(b) and § 87(2)(b). § 87(2)(b) and § 87(2)(b) were allegedly in possession of a lit marijuana cigarette (Board Review 02 and 03).

PO Lowe and PO Martinez approached § 87(2)(b) walking directly past § 87(2)(b). § 87(2)(b) alleged that PO Martinez jumped on his back (**Allegation A**). § 87(2)(b) back-pedaled towards § 87(2)(b) as PO Martinez held onto § 87(2)(b) and PO Lowe attempted help PO Martinez stop him. The front door of § 87(2)(b) was opened by someone inside the apartment. § 87(2)(b) alleged that PO Lowe swiped at his feet, causing him to fall inside the apartment (**Allegation B**). § 87(2)(b) fell to the ground inside § 87(2)(b) and PO Martinez fell on top of him, entering the apartment (**Allegation C**). PO Lowe stepped just inside the apartment as he attempted to pull § 87(2)(b) outside of § 87(2)(b) by his legs (**Allegations D and E**). Video footage captures this portion of the incident.



201601121_20160509_1001_DM.mp4

§ 87(2)(b)'s younger brother, mother and grandmother—§ 87(2)(b) and § 87(2)(b) respectively-- were among the civilians inside of § 87(2)(b). § 87(2)(b) stood outside of § 87(2)(b) and filmed the incident on a cellphone. § 87(2)(b) was secured in handcuffs by PO Martinez. § 87(2)(b) alleged that after the handcuffs were secured, PO Lowe used pepper spray against him (**Allegation F**). It is undisputed that PO Lowe used pepper spray against § 87(2)(b) but video footage shows that § 87(2)(b) was not secured in handcuffs when PO Lowe used pepper spray against him.



201601121_20160509_1038_DM.mp4

PO Lowe exited § 87(2)(b) and asked § 87(2)(b) "You filmed all this? You're going into cuffs for now." § 87(2)(b) responded, "Huh," and PO Lowe replied, "Until we get this settled down, you're going in cuffs." PO Lowe placed § 87(2)(b) in handcuffs. § 87(2)(b) was ultimately arrested by PO Lowe for § 87(2)(b) (Board Review 03)

§ 87(2)(g) Video footage captures the above interaction between PO Lowe and § 87(2)(b)



201601121_20160509_1039_DM.mp4

After § 87(2)(b) was secured in handcuffs, § 87(2)(b) retrieved money from one of § 87(2)(b)'s pockets. With both of his arms PO Lowe grabbed § 87(2)(b) from behind, and attempted to retrieve the money out of § 87(2)(b)'s hand (**Allegation G**). § 87(2)(b) alleged that PO Lowe said, "This time I'm going to arrest all of y'all," (**Allegation H**). PO Lowe retrieved the money from § 87(2)(b)



201601121_20160509_1047_DM.mp4

§ 87(2)(b) and § 87(2)(b) were transported to the 48th Precinct stationhouse. Lieutenant Luis Crespo of Patrol Borough Bronx authorized strip-searches of both § 87(2)(b) and § 87(2)(b) (**Allegations I and J**). PO Lowe conducted strip-searches of both § 87(2)(b) and § 87(2)(b) (**Allegations K and L**). The strip-searches yielded negative results (Board Review 02 and 03).

§ 87(2)(b) was charged with § 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b). All charges against both § 87(2)(b) and § 87(2)(b) were dropped. § 87(2)(a) 160.50

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation, because § 87(2)(b) retained an attorney for the purposes of filing a civil law suit regarding this incident (Board Review 05).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- The New York City Comptroller's Office indicated that neither § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) filed a Notice of Claim regarding this incident (Board Review 09).

Civilian and Officer CCRB Histories

- This is the second CCRB complaint involving an interaction between PO Lowe and § 87(2)(b) (and others) at § 87(2)(b) the Bronx, within a period of three weeks (Board Review 10).
 - CCRB case 201600739 is still pending board review, but the undersigned recommended that seven allegations against PO Lowe be substantiated, including a strip-search of § 87(2)(b)
 - The undersigned also recommended that the Internal Affairs Bureau conduct further investigation, as there was evidence suggesting that PO Lowe provided a false official statement regarding the incident in question in CCRB 201600739 (Board Review 11).
- This is the second CCRB complaint filed by § 87(2)(b) (Board Review 12).
- This is the second CCRB complaint in which § 87(2)(b) and § 87(2)(b) are involved (Board Review 12).
- PO Sandra Martinez has been a member of service for two years, and this is the first CCRB complaint in which PO Martinez is a subject officer.
- PO Darrell Lowe has been a member of service for two years, and this is the third CCRB complaint in which PO Lowe is a subject officer. He has been the subject of 13 previous allegations, 10 of which are pending board review. None of the remaining three allegations were substantiated.
 - As mentioned above, PO Lowe previously interacted with § 87(2)(b) and § 87(2)(b) at the same location, approximately three weeks prior to this incident.
- Lieutenant Luis Crespo has been a member of service for 22 years and he has been the subject of three previous CCRB allegations, none of which were substantiated, and none regarded a strip-search.

Findings and Recommendations

Allegations not pleaded

- **Force:** § 87(2)(b) alleged, when she filed the complaint, that PO Martinez choked § 87(2)(b) § 87(2)(b) did not allege this during her sworn statement, nor did any other civilian, including § 87(2)(b) § 87(2)(g)
- **Force:** § 87(2)(b) alleged, when she filed the complaint, that PO Martinez threw § 87(2)(b) to the ground inside her apartment. She did not allege this during her sworn statement, nor did any other civilian, including § 87(2)(b) § 87(2)(g)

- **Force:** § 87(2)(b) alleged, when she filed the complaint, that PO Lowe threw § 87(2)(b) to the ground inside her apartment. She did not allege this during her sworn statement, nor did any other civilian, including § 87(2)(b) § 87(2)(g).
- **Abuse of Authority:** § 87(2)(b) alleged that PO Lowe threatened to arrest all occupants of her apartment. No other civilian alleged that PO Lowe threatened to arrest them, and the only other civilian who reported that a threat of arrest was made was § 87(2)(b) who testified that PO Lowe’s threat was directed only to § 87(2)(b) § 87(2)(g).
- **Discourtesy:** In video footage provided to the CCRB by § 87(2)(b) PO Lowe may be heard saying, “You’re getting arrested this fucking time,” and later, “Well what the fuck is he doing?” No civilian alleged that an officer used discourteous language during the incident. § 87(2)(g).
- **Abuse of Authority:** A refusal to provide shield number allegation was not pleaded against PO Martinez. § 87(2)(b) alleged that she asked PO Martinez for her shield number, and PO Martinez did not provide it, but then § 87(2)(b) read it from PO Martinez’s uniform. PO Martinez acknowledged that § 87(2)(b) asked for her shield number, and she testified that by the time she had the opportunity to provide to § 87(2)(b) § 87(2)(b) was saying her shield number aloud. § 87(2)(b) provided PO Martinez’s shield number when she filed this complaint. § 87(2)(g)
- § 87(2)(g)

Allegation A – Force: PO Sandra Martinez used physical force against § 87(2)(b)

Allegation B – Force: PO Darrell Lowe used physical force against § 87(2)(b)

While conducting a vertical patrol of § 87(2)(b) § 87(2)(b) in the Bronx, PO Martinez and PO Lowe reportedly observed § 87(2)(b) in possession of a lit marijuana cigarette. § 87(2)(b) was arrested and charged regarding this reported observation (Board Review 02), and a cigar containing marijuana was vouchered as arrest evidence (Board Review 13).

After both § 87(2)(b) and § 87(2)(b) were secured in handcuffs, § 87(2)(b) retrieved money from the pocket of § 87(2)(b). Video footage shows that PO Lowe wrapped both his arms around § 87(2)(b) from behind, and attempted to physically retrieve the money from § 87(2)(b)'s hand. After approximately 30 seconds of struggling with § 87(2)(b)—grabbing § 87(2)(b) from behind with both of his arms—PO Lowe successfully retrieved the money. It is undisputed that PO Lowe's use of force against § 87(2)(b) ended as soon as he retrieved the money.



201601121_20160509_1047_DM.mp4

At the scene of a police incident, an officer must use the minimum necessary force, Patrol Guide Procedure 203-11 (Board Review 18).

§ 87(2)(g)
[Redacted text block]

Allegation H – Abuse of Authority: PO Darrell Lowe threatened to arrest § 87(2)(b)

When § 87(2)(b) filed this complaint (Board Review 22), she alleged that before PO Lowe used pepper spray against § 87(2)(b) he stated, “This time I am going to arrest you all.” In her sworn statement to the CCRB, § 87(2)(b) alleged that as she was exiting her apartment to witness the aforementioned physical interaction between § 87(2)(b) and PO Lowe, PO Lowe said, “This time I’m going to arrest all of y’all.”

§ 87(2)(b) testified that PO Lowe asked § 87(2)(b) if “she wanted to go as well,” seeming to refer to jail. § 87(2)(b) and every other individual interviewed by the CCRB, aside from § 87(2)(b) did not report that PO Lowe threatened to arrest anyone.

Video footage that § 87(2)(b) provided to the CCRB indicates that while PO Lowe was assisting PO Martinez in apprehending § 87(2)(b) he stated, “You’re getting arrested this fucking time.” It is unclear from the video to who this statement is directed. PO Lowe testified that he did not know to who this statement was directed.



201601121_20160510_1018_DM.mp4

§ 87(2)(g)
[Redacted text block]

Allegation L – Abuse of Authority: At the 48th Precinct stationhouse, PO Darrell Lowe strip-searched § 87(2)(b)

Allegation M – Abuse of Authority: At the 48th Precinct stationhouse, PO Darrell Lowe strip-searched § 87(2)(b)

It is undisputed that PO Lowe strip-searched § 87(2)(b) and § 87(2)(b). PO Lowe testified that he strip-searched § 87(2)(b) and § 87(2)(b) because they went inside their pockets when he first observed them, although he did not recall which pockets inside of which

they went; because the building is known for drug activity; because approximately \$1000 USD was recovered between § 87(2)(b) and § 87(2)(b)—PO Lowe did not recall how much money was recovered from each individual; and that marijuana was involved. PO Lowe testified that there was no other reason to strip-search either § 87(2)(b) or § 87(2)(b).

PO Martinez testified that she did not observe anything in particular which led her to believe that either § 87(2)(b) or § 87(2)(b) was concealing contraband. PO Martinez denied observing either § 87(2)(b) or § 87(2)(b) going in or out of any pockets.

The marijuana cigarette that led to the arrests of § 87(2)(b) and § 87(2)(b) was recovered at the scene, prior to when the strip-searches were conducted. Prior to the strip-searches, procedural frisks and searches of § 87(2)(b) and § 87(2)(b) were conducted at the scene of the arrest and in front of the desk at the 48th Precinct stationhouse, and each search yielded negative results for any illicit item.

\$241 USD was vouchered under § 87(2)(b)'s name (Board Review 23), and \$375 was vouchered under § 87(2)(b)'s name (Board Review 24).

Both strip-searches yielded negative results (Board Reviews 02 and 03)

An officer may conduct a strip-search when the officer possesses reasonable suspicion that the arrestee is concealing evidence underneath clothing, People v. Hall, 10 NY3d 303 (2008) (Board Review 25).

§ 87(2)(g)

Allegation J – Abuse of Authority: At the 48th Precinct stationhouse, Lieutenant Luis

Crespo authorized the strip-search of § 87(2)(b)

Allegation K – Abuse of Authority: At the 48th Precinct stationhouse, Lieutenant Luis

Crespo authorized the strip-search of § 87(2)(b)

Lt. Crespo (Board Review 27) acknowledged authorizing the strip-searches of both § 87(2)(b) and § 87(2)(b).

Lt. Crespo made a notation in the command log (Board Review 26) that § 87(2)(b) and § 87(2)(b) were strip-searched, because PO Lowe believed they were hiding contraband based on the defendants' history.

Lt. Crespo testified that the “defendants’ history” notation referred to PO Lowe telling him that he had previously interacted with one of the defendants. Lt. Crespo did not learn any of the details of the previous interaction, nor did he ask any follow-up questions. Lt. Crespo did not do a criminal history search of either individual, nor did PO Lowe indicate to him that he had conducted such a search.

When asked why he authorized the strip-searches, Lt. Crespo testified, “Basically, right from the beginning, like I mentioned, the location of the building, a Clean Halls location, in the

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date